

COVID-19: Industrial Mobilization and Defense Production Act (DPA) Implementation

March 25, 2020

On March 18, President Trump issued [Executive Order 13909](#), *Prioritizing and Allocating Health and Medical Resources to Respond to the Spread of COVID-19*, which announced the President's invocation of the [Defense Production Act of 1950](#) (DPA) in response to the COVID-19 pandemic. The administration [has yet to publicly provide direction](#) to the private sector under this authority.

This Insight considers possible future DPA implementation processes, industrial mobilization, and congressional considerations concerning the COVID-19 pandemic, and is a companion to CRS Insight [IN11231](#). See CRS Report [R43767](#) for a more in-depth discussion of DPA history and authorities. For additional related resources, see the CRS Coronavirus Disease 2019 homepage.

Overview of DPA Powers in EO 13909

Executive Order 13909 (E.O. 13909), issued on March 18, 2020, in response to reported [critical shortages of medical equipment and supplies](#), is organized into three sections:

- Section 1, *Policy and Findings*, announces the invocation of DPA authorities on the basis of the national security risk posed by the COVID-19 pandemic with the finding that current resources are insufficient to the task without the emergency authorities provided by the DPA.
- Section 2, *Priorities and Allocation of Medical Resources*, activates DPA Title I prioritization and allocation authorities, and provides for the Secretary of Health and Human Services (HHS), in consultation with the Secretary of Commerce and other executive agency heads, to exercise their use and issue additional guidelines and regulations as needed.
- Section 3, *General Provisions*, includes general provisions applicable to carrying out the executive order.

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The activation of DPA Title I prioritization and allocation authorities by E.O. 13909 represents the first time in the modern era that the DPA has been invoked and activated for the purposes of national industrial mobilization in response to a domestic threat (the COVID-19 pandemic).

Executing DPA Authorities in E.O. 13909

The DPA provides the chief executive with various emergency powers that may be made available if invoked, but it is generally silent on the means by which those powers may be activated and implemented.

E.O. 13909 expresses the President's determination to invoke DPA emergency powers, and provides a general framework by which the relevant authorities may be activated and implemented. However, the executive order does not prescribe how those powers may be exercised, organized, or measured. Although the President may publicize his intentions with regard to DPA invocations in an executive order, he is not obligated to do so. For example, in July 2019, a [Presidential Determination was issued](#) in a memorandum to the Secretary of Defense invoking DPA Title III to expand productive capacity of rare earth metals.

Although invoking DPA authorities makes those powers available to the President, they are not necessarily exercised except at the chief executive's discretion. To this end, E.O. 13909 provides for the HHS Secretary to determine appropriate measures to making use of the prioritization and allocation authorities. The delegation of authority to the HHS Secretary is consistent with [E.O. 13603](#), *National Defense Resources Preparedness*, in which HHS is delegated Title I authorities with respect to health resources.

Implementation of DPA Title I authorities is governed by the [Federal Priorities and Allocations System](#) (FPAS), which is a body of [five regulations](#) that establishes standards and procedures for five executive agencies' separate resource jurisdictions as delegated in E.O. 13603 (the Department of Defense, the sixth agency, only manages priority and allocations orders related to water resources). Accordingly, HHS [Health Resources Priority and Allocations System](#) (HRPAS) frames implementation of Title I authorities with respect to health resources. However, E.O. 13909 does not direct the immediate use of HRPAS, nor does it provide a process to inform its employment.

Policy Considerations for Industrial Mobilization

The decision to invoke, activate, and implement DPA authorities—and how that process occurs—is at the President's discretion. Even after invoking and activating DPA authorities, the [President may ultimately choose not to implement](#) them, or to do so piecemeal. Although the DPA statute does provide [certain congressional equities](#), the President may waive most of them, with the exception of the ability to set price and wage controls under Title I. However, Congress may enact laws, provide or deny funding, or provide guidance to signal intent, broaden oversight, and provide additional mechanisms for effecting a robust industrial response to the COVID-19 pandemic.

- To signal intent, Members may issue letters to the President and introduce resolutions calling for the activation and implementation of certain DPA authorities. Congress may also consider supplemental appropriations to the DPA Fund, an account generally used to support Title III activities, with directives that it be used for the implementation of specific DPA authorities and purposes during the COVID-19 pandemic response.
- Congress may advise, or otherwise encourage, the administration to make use of other DPA authorities, such as Title III, which provides financial incentives and other mechanisms to expand productive capacity; and Title VII, which provides for the establishment of industry coordination mechanisms and advisory bodies in carrying out other DPA activities.
- Congress may seek to broaden reporting requirements to include reporting by HHS (and other relevant executive agencies) with regard to the use of DPA authorities in response to the COVID-19 pandemic. Separately, Congress may expand congressional reporting requirements given to the Defense Production Act Committee (DPAC)—a [multi-agency body](#) that advises the President on the use of DPA authorities and issues an [annual report to Congress](#)—and/or the Office of the Deputy Assistant Secretary of Defense for Industrial Policy, which maintains a [standing Title III program](#) and issues an [annual industrial capabilities report](#) to Congress.
- Congress may seek to recreate wartime capabilities of emergency industrial mobilization within the executive branch. For example, the [Office of Defense Mobilization](#) was created in 1950 ([E.O. 10193](#)) under DPA authority and was tasked with implementing and coordinating industrial mobilization during the Korean War.

Additionally, consistent with the President's statements [promoting state-level action](#), Congress may seek to appropriate block grants to states and other units of government to provide local industries with financial incentives to retool, retrofit, or expand productive capacity in response to the COVID-19 pandemic. This may be accomplished as an extension of DPA authorities or provided independently.

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